

1 BILL NO. S-94-09-*K*

1
2 SPECIAL ORDINANCE NO. S-7694

3
4 AN ORDINANCE approving Contract
5 #6338-94, WASHINGTON CENTER ROAD
6 IMPROVEMENTS PHASE II: GOSHEN ROAD
7 TO EAST OF RIDGEBROOK DRIVE between
8 BROOKS CONSTRUCTION COMPANY, INC.
9 and the City of Fort Wayne, Indiana,
10 in connection with the Board of
11 Public Works.

12
13 NOW, THEREFORE, BE IT ORDAINED BY THE COMMON
14 COUNCIL OF THE CITY OF FORT WAYNE, INDIANA:

15
16 SECTION 1. That the Contract #6338-94,
17 WASHINGTON CENTER ROAD IMPROVEMENTS PHASE II: GOSHEN
18 ROAD TO EAST OF RIDGEBROOK DRIVE, by and between BROOKS
19 CONSTRUCTION CO., INC. and the City of Fort Wayne,
20 Indiana, in connection with the Board of Public Works, is
21 hereby ratified, and affirmed and approved in all
22 respects, respectfully for:

23
24 the widening of pavement, resurfacing, new
25 shoulders, drainage ditch rehabilitation,
26 pavement markings and restoration on
27 Washington Center Road: Goshen Road to East
28 of Ridgebrook Drive;
29 involving a total cost of TWO HUNDRED NINETY-TWO THOUSAND
30 TWO HUNDRED NINETY-FIVE AND 63/100 Dollars
31 (\$292,295.63).

32
33 SECTION 2. Prior Approval has been requested
34 from Common Council on AUGUST 23, 1994. Two copies of
35 said Contract are on file with the Office of the City
36 Clerk and made available for public inspection, according
37 to law.

38
39 SECTION 3. That this Ordinance shall be in
40 full force and effect from and after its passage and any
41 and all necessary approval by the Mayor.

42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100
101
102
103
104
105
106
107
108
109
110
111
112
113
114
115
116
117
118
119
120
121
122
123
124
125
126
127
128
129
130
131
132
133
134
135
136
137
138
139
140
141
142
143
144
145
146
147
148
149
150
151
152
153
154
155
156
157
158
159
160
161
162
163
164
165
166
167
168
169
170
171
172
173
174
175
176
177
178
179
180
181
182
183
184
185
186
187
188
189
190
191
192
193
194
195
196
197
198
199
200
201
202
203
204
205
206
207
208
209
210
211
212
213
214
215
216
217
218
219
220
221
222
223
224
225
226
227
228
229
230
231
232
233
234
235
236
237
238
239
240
241
242
243
244
245
246
247
248
249
250
251
252
253
254
255
256
257
258
259
260
261
262
263
264
265
266
267
268
269
270
271
272
273
274
275
276
277
278
279
280
281
282
283
284
285
286
287
288
289
290
291
292
293
294
295
296
297
298
299
300
301
302
303
304
305
306
307
308
309
310
311
312
313
314
315
316
317
318
319
320
321
322
323
324
325
326
327
328
329
330
331
332
333
334
335
336
337
338
339
340
341
342
343
344
345
346
347
348
349
350
351
352
353
354
355
356
357
358
359
360
361
362
363
364
365
366
367
368
369
370
371
372
373
374
375
376
377
378
379
380
381
382
383
384
385
386
387
388
389
390
391
392
393
394
395
396
397
398
399
400
401
402
403
404
405
406
407
408
409
410
411
412
413
414
415
416
417
418
419
420
421
422
423
424
425
426
427
428
429
430
431
432
433
434
435
436
437
438
439
440
441
442
443
444
445
446
447
448
449
450
451
452
453
454
455
456
457
458
459
460
461
462
463
464
465
466
467
468
469
470
471
472
473
474
475
476
477
478
479
480
481
482
483
484
485
486
487
488
489
490
491
492
493
494
495
496
497
498
499
500
501
502
503
504
505
506
507
508
509
510
511
512
513
514
515
516
517
518
519
520
521
522
523
524
525
526
527
528
529
530
531
532
533
534
535
536
537
538
539
540
541
542
543
544
545
546
547
548
549
550
551
552
553
554
555
556
557
558
559
550
551
552
553
554
555
556
557
558
559
560
561
562
563
564
565
566
567
568
569
570
571
572
573
574
575
576
577
578
579
580
581
582
583
584
585
586
587
588
589
589
590
591
592
593
594
595
596
597
598
599
600
601
602
603
604
605
606
607
608
609
610
611
612
613
614
615
616
617
618
619
620
621
622
623
624
625
626
627
628
629
630
631
632
633
634
635
636
637
638
639
640
641
642
643
644
645
646
647
648
649
650
651
652
653
654
655
656
657
658
659
660
661
662
663
664
665
666
667
668
669
661
662
663
664
665
666
667
668
669
670
671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686
687
688
689
690
691
692
693
694
695
696
697
698
699
700
701
702
703
704
705
706
707
708
709
7010
7011
7012
7013
7014
7015
7016
7017
7018
7019
7020
7021
7022
7023
7024
7025
7026
7027
7028
7029
7030
7031
7032
7033
7034
7035
7036
7037
7038
7039
7040
7041
7042
7043
7044
7045
7046
7047
7048
7049
7050
7051
7052
7053
7054
7055
7056
7057
7058
7059
7060
7061
7062
7063
7064
7065
7066
7067
7068
7069
7070
7071
7072
7073
7074
7075
7076
7077
7078
7079
7080
7081
7082
7083
7084
7085
7086
7087
7088
7089
7090
7091
7092
7093
7094
7095
7096
7097
7098
7099
70100
70101
70102
70103
70104
70105
70106
70107
70108
70109
70110
70111
70112
70113
70114
70115
70116
70117
70118
70119
70120
70121
70122
70123
70124
70125
70126
70127
70128
70129
70130
70131
70132
70133
70134
70135
70136
70137
70138
70139
70140
70141
70142
70143
70144
70145
70146
70147
70148
70149
70150
70151
70152
70153
70154
70155
70156
70157
70158
70159
70160
70161
70162
70163
70164
70165
70166
70167
70168
70169
70170
70171
70172
70173
70174
70175
70176
70177
70178
70179
70180
70181
70182
70183
70184
70185
70186
70187
70188
70189
70190
70191
70192
70193
70194
70195
70196
70197
70198
70199
70200
70201
70202
70203
70204
70205
70206
70207
70208
70209
70210
70211
70212
70213
70214
70215
70216
70217
70218
70219
70220
70221
70222
70223
70224
70225
70226
70227
70228
70229
70230
70231
70232
70233
70234
70235
70236
70237
70238
70239
70240
70241
70242
70243
70244
70245
70246
70247
70248
70249
70250
70251
70252
70253
70254
70255
70256
70257
70258
70259
70260
70261
70262
70263
70264
70265
70266
70267
70268
70269
70270
70271
70272
70273
70274
70275
70276
70277
70278
70279
70280
70281
70282
70283
70284
70285
70286
70287
70288
70289
70290
70291
70292
70293
70294
70295
70296
70297
70298
70299
702100
702101
702102
702103
702104
702105
702106
702107
702108
702109
702110
702111
702112
702113
702114
702115
702116
702117
702118
702119
702120
702121
702122
702123
702124
702125
702126
702127
702128
702129
702130
702131
702132
702133
702134
702135
702136
702137
702138
702139
702140
702141
702142
702143
702144
702145
702146
702147
702148
702149
702150
702151
702152
702153
702154
702155
702156
702157
702158
702159
702160
702161
702162
702163
702164
702165
702166
702167
702168
702169
702170
702171
702172
702173
702174
702175
702176
702177
702178
702179
702180
702181
702182
702183
702184
702185
702186
702187
702188
702189
702190
702191
702192
702193
702194
702195
702196
702197
702198
702199
702200
702201
702202
702203
702204
702205
702206
702207
702208
702209
702210
702211
702212
702213
702214
702215
702216
702217
702218
702219
702220
702221
702222
702223
702224
702225
702226
702227
702228
702229
702230
702231
702232
702233
702234
702235
702236
702237
702238
702239
702240
702241
702242
702243
702244
702245
702246
702247
702248
702249
702250
702251
702252
702253
702254
702255
702256
702257
702258
702259
702260
702261
702262
702263
702264
702265
702266
702267
702268
702269
702270
702271
702272
702273
702274
702275
702276
702277
702278
702279
702280
702281
702282
702283
702284
702285
702286
702287
702288
702289
702290
702291
702292
702293
702294
702295
702296
702297
702298
702299
702300
702301
702302
702303
702304
702305
702306
702307
702308
702309
702310
702311
702312
702313
702314
702315
702316
702317
702318
702319
702320
702321
702322
702323
702324
702325
702326
702327
702328
702329
702330
702331
702332
702333
702334
702335
702336
702337
702338
702339
702340
702341
702342
702343
702344
702345
702346
702347
702348
702349
702350
702351
702352
702353
702354
702355
702356
702357
702358
702359
702360
702361
702362
702363
702364
702365
702366
702367
702368
702369
702370
702371
702372
702373
702374
702375
702376
702377
702378
702379
702380
702381
702382
702383
702384
702385
702386
702387
702388
702389
702390
702391
702392
702393
702394
702395
702396
702397
702398
702399
702400
702401
702402
702403
702404
702405
702406
702407
702408
702409
702410
702411
702412
702413
702414
702415
702416
702417
702418
702419
702420
702421
702422
702423
702424
702425
702426
702427
702428
702429
702430
702431
702432
702433
702434
702435
702436
702437
702438
702439
702440
702441
702442
702443
702444
702445
702446
702447
702448
702449
702450
702451
702452
702453
702454
702455
702456
702457
702458
702459
702460
702461
702462
702463
702464
702465
702466
702467
702468
702469
702470
702471
702472
702473
702474
702475
702476
702477
702478
702479
702480
702481
702482
702483
702484
702485
702486
702487
702488
702489
702490
702491
702492
702493
702494
702495
702496
702497
702498
702499
702500
702501
702502
702503
702504
702505
702506
702507
702508
702509
702510
702511
702512
702513
702514
702515
702516
702517
702518
702519
702520
702521
702522
702523
702524
702525
702526
702527
702528
702529
702530
702531
702532
702533
702534
702535
702536
702537
702538
702539
702540
702541
702542
702543
702544
702545
702546
702547
702548
702549
702550
702551
702552
702553
702554
702555
702556
702557
702558
702559
702560
702561
702562
702563
702564
702565
702566
702567
702568
702569
702570
702571
702572
702573
702574
702575
702576
702577
702578
702579
702580
702581
702582
702583
702584
702585
702586
702587
702588
702589
702590
702591
702592
702593
702594
702595
702596
702597
702598
702599
702600
702601
702602
702603
702604
702

CONTRACT NO. 6338-94
WASHINGTON CENTER ROAD IMPROVEMENTS PHASE II:
GOSHEN ROAD TO EAST OF RIDGEBROOK DRIVE
(CREDIT BOND)

BOARD ORDER NO. 193-93

WORK ORDER NO. 11116

THIS CONTRACT made and entered into in triplicate this 24 day of August, 1994, by and between BROOKS CONSTRUCTION CO., INC., herein called CONTRACTOR, and the City of Fort Wayne, Indiana, an Indiana Municipal Corporation, acting by and through the Mayor and the Board of Public Works, herein called OWNER;

WITNESSETH, that the CONTRACTOR and the OWNER, for the considerations hereinafter named, agree as follows:

ARTICLE 1: SCOPE OF WORK

CONTRACTOR shall furnish all labor, material, equipment, tools, power, transportation, miscellaneous equipment, etc., necessary for the following:

WIDEN PAVEMENT, RESURFACING, NEW SHOULDERs, DRAINAGE DITCH REHABILITATION, PAVEMENT MARKINGS AND RESTORATION

all according to RES. #6338-94 and do everything required by this contract and the other documents constituting a part hereof.

ARTICLE 2: THE CONTRACT SUM

The OWNER shall pay CONTRACTOR for the performance of the contract the unit price sum of \$292,295.63. In the event the amount of work is increased or decreased by OWNER, the contract sum shall be increased or decreased according to the unit price schedule set forth in the CONTRACTOR's Proposal.

ARTICLE 3: PROGRESS PAYMENTS AND RETAINAGE

The CONTRACTOR may submit requests for payments no more often than every thirty (30) days for work performed and accepted under the contract. If the contractor is in compliance with the provisions of the contract, the Board will make payments for such work performed and completed. However, in any such case, the Board will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure Contractor's compliance with the E.B.E. Rider attached to the contract. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-

compliance, as provided in paragraph 6 of the E.B.E. Rider.

ARTICLE 4: ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due at the time the work is fully completed and accepted and the contract, including the E.B.E. Rider, is fully performed. Payments to the Contractor are not to exceed 90% of the total contract amount until the Owner has verified that the Contractor has made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider attached hereto.

Upon filing of a **Completion Affidavit** by the **CONTRACTOR** that the work is ready for final inspection and acceptance, the **Board of Public Works** will direct the **Engineering Department** of the **OWNER** to promptly make such inspection and will direct the **Contract Compliance Department** of the **OWNER** to make a final recommendation on whether the **CONTRACTOR** made good faith efforts to attain the E.B.E. goal stipulated in the E.B.E. Rider.

When the **Engineering Department** finds the work acceptable under the contract, and the contract is fully performed, it shall so inform the **Board of Public Works**. Likewise, when the **Contract Compliance Department** determines that the **CONTRACTOR'S** efforts constitute good faith efforts to attain the E.B.E. goal as agreed in the E.B.E. Rider, it shall so inform the **Board of Public Works** through an **E.B.E. Compliance Final Report**.

Upon receiving both the **Engineering Department's** and the **Contract Compliance Department's** recommendations, the **Board of Public Works** shall issue a final certificate stating the work provided for in this Contract has been completed and accepted, and further stating that the E.B.E. Rider goal has been met. Thereupon, the entire balance of the Contract sum shall be due and payable to the **CONTRACTOR**; provided only that the **CONTRACTOR** shall first furnish **OWNER**, if requested to do so, satisfactory evidence that all persons who have supplied labor, material or equipment for the work have been fully paid, and all required manpower utilization reports for this project have been submitted.

In the event that the **Board of Public Works** determines that good faith compliance with the E.B.E. Rider has not occurred, appropriate reduction in the final payment will be made, pursuant to paragraph 6 of the E.B.E. Rider attached hereto. Said amount shall be added to the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payment of the final 10% of the total contact amount will be dependent upon good faith efforts to comply with the E.B.E. Rider, and subject to appropriate reduction in the event of non-compliance, as provided in paragraph 6 of the E.B.E. Rider attached hereto.

ARTICLE 5: WORKMEN'S COMPENSATION ACT

The CONTRACTOR will furnish immediately a certificate from the Industrial Board of the State of Indiana, that he has complied with the Workmen's Compensation Act in accordance with Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

Any judgment rendered against the City of Fort Wayne in any suits for damages for injury to real or personal property, or for any injury sustained by any person growing out of any act or doing of Contractor, or its agents, employees or workmen or any judgment of any court or award or any Board of Arbitrators or of the Industrial Board of the State of Indiana rendered against the City of Fort Wayne in any suit or claim arising under said Workmen's Compensation for accidental injuries or death suffered by his employees or the employees of any Subcontractor or Subcontractors in the course of their employment, when notice of the pendency of such suit, hearing or arbitration shall have been given said CONTRACTOR, shall be conclusive against CONTRACTOR as to amount, liability and all other things pertaining thereto; it being the intent of the parties hereto that CONTRACTOR indemnify and hold harmless OWNER in the premises.

ARTICLE 6: NONDISCRIMINATION OF LABOR

The CONTRACTOR further agrees to be bound by Section 15-13 (as amended), of the Code of the City of Fort Wayne, Indiana of 1974, passed by the Common Council of the City of Fort Wayne, Indiana as General Ordinance No. G-34-78 (as amended) on December 12th, 1978. The successful bidder shall file a Manpower Utilization Report for this project with the Compliance Office within ten (10) days after completion of construction or upon request of the Office of Compliance.

ARTICLE 7: PREVAILING WAGE SCALE

The CONTRACTOR agrees to pay, and also requires of his subcontractors that they pay wage rates on the work covered by this contract which shall not be less than the prescribed scale of wages as determined pursuant to the Statutes of the State of Indiana, and the Ordinances of the City of Fort Wayne according to the applicable wage scale as included in the bid documents.

ARTICLE 8: COMPONENT PARTS OF THIS CONTRACT

The following documents are as fully a part of the contract as if hereto attached or herein repeated:

- a. Advertisement for Bids, for Resolution No. 6338-94.
- b. Instructions to Bidders for Resolution No. 6338-94.
- c. Contractor's Proposal Dated 10 AUGUST 1994.
- d. Ft. Wayne Street Engineering Drawings accompanying bid packet for Resolution No. 6338-94.
- e. Supplemental Specifications accompanying bid packet for Resolution No. 6338-94.
- f. Workmen's Compensation Act, Statutes of the State of Indiana and Ordinances of the City of Fort Wayne.

- g. Non-Discrimination of Labor, General Ordinance No. G-34-78 (as amended).
- h. Prevailing Wage Scale.
- i. Performance and Guaranty Bond.
- j. Labor and Material Payment Bond.
- k. Right-of-Way Cut Permit.
- l. Comprehensive Liability Insurance Coverage.
- m. Minority/Female Employment Hourly Utilization
- n. E.B.E. Rider

ARTICLE 9: GUARANTEE OF WORKMANSHIP

At the time of execution of this contract, the CONTRACTOR shall furnish a Performance and Guaranty Bond in favor of the City of Fort Wayne in the amount of the total value of the materials supplied and/or work performed under the terms of this contract. The said bond shall ensure the completion of the work covered hereunder and shall guarantee the materials and workmanship for a period of three (3) years following written acceptance of the work by the OWNER.

ARTICLE 10: INDEMNITY

CONTRACTOR shall furnish to OWNER, within ten (10) days of the date hereof, a certificate from an insurer acceptable to OWNER showing personal injury and property damage insurance, in force and issued in connection with the work to be performed under this Contract, in amounts satisfactory to OWNER and in accordance with the Statutes of the State of Indiana.

ARTICLE II: ADJUSTMENTS OF DISPUTES

All questions or controversies which may arise between the CONTRACTOR and the OWNER under the provisions of this Contract shall be subject to the decision of the Director of Public Works of the OWNER, and his decision shall be final and conclusive upon the parties.

Provided, however, no changes in the plans, specifications, or other phases of the work covered by this Contract will be permitted except on prior written authorization by the Board of Public Works.

ARTICLE 12:

The CONTRACTOR agrees to complete the work specified in the contract by 7 OCTOBER 1994 after having been ordered by the OWNER to commence work under this contract.

ARTICLE 13: COUNCILMANIC APPROVAL

This Agreement, although executed on behalf of the OWNER by the Mayor and Board of Public Works of the City of Fort Wayne, Indiana, shall not be binding upon the OWNER unless and until the same shall have been ratified and approved by the Common Council of the City of Fort Wayne, Indiana, (in accordance with General Ordinance No.

G-47-92) and should said Common Council fail to approve the same within ninety (90) days after the date hereof, then this Contract shall be and become wholly void.

ARTICLE 14:

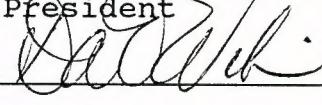
This contract is governed by Laws of the State of Indiana.

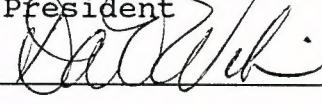
IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

CONTRACTOR

BY: 

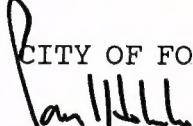
Andrew F. Brooks

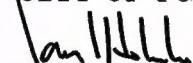
Vice President 

BY: 

Dawn E. Wilson

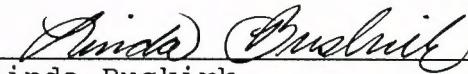
Secretary

 CITY OF FORT WAYNE, INDIANA

BY: 

Paul Helmke, Mayor

BOARD OF PUBLIC WORKS

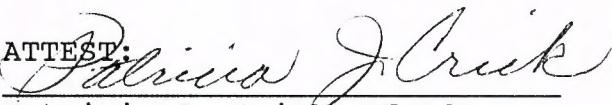
 Linda Buskirk

Director of Public Works

 C. James Owen

Member

ATTEST:

 Patricia J. Crick

Patricia J. Crick, Clerk

ACKNOWLEDGMENT

STATE OF INDIANA:

ss:

COUNTY OF ALLEN:

Sara R Boardman
NOTARY PUBLIC

NOTARY PUBLIC

Sara R. Boardman

(Type or print name of notary)

MY COMMISSION EXPIRES: 3-22-95

ACKNOWLEDGEMENT

STATE OF INDIANA)
) SS:
COUNTY OF ALLEN)

BEFORE ME, a Notary Public, in and for said County and State,
this 25 day of Aug, 1994, personally
appeared the within named Paul Helmke, Mayor of the City of Fort
Wayne; Linda Buskirk, C. James Owen and
members of the Board of Public Works, City of Fort Wayne, Indiana;
and Patricia J. Crick, Clerk of the Board of Public Works, City of
Fort Wayne, Indiana, to me personally known, who being by me duly
sworn said that they are respectively the Mayor of the City of Fort
Wayne, the Members and Clerk of the Board of Public Works and
Safety of the City of Fort Wayne, Indiana, and that they signed
said instrument on behalf of the City of Fort Wayne, Indiana, with
full authority so to do and acknowledged said instrument to be the
voluntary act and deed of said City for the uses and purposes
therein set forth.

IN WITNESS WHEREOF, hereunto subscribed my name, affixed my
official seal.

Carolyn S. Newport
NOTARY PUBLIC

Carolyn S. Newport
Type or Print Name of Notary

My Commission Expires: 6-21-95

Approved by the Common Council of the City of Fort Wayne on
day of _____, 19_____.
Special Ordinance No. _____.

E.B.E. RIDER

THIS AGREEMENT made and entered into by and between the CITY OF FORT WAYNE, hereinafter referred to as "Owner", and _____ BROOKS CONSTRUCTION CO., INC., hereinafter referred to as "Contractor",

WITNESSETH:

WHEREAS, Contractor is the apparent low bidder on construction project commonly referred to as the WASHINGTON CENTER ROAD IMPROVEMENTS PHASE II: GOSHEN ROAD TO EAST OF RIDGEBROOK DRIVE. which project was bid under Resolution Number 6338-94; and

WHEREAS, Contractor agrees that the goal for qualified Emerging Business Enterprises, hereinafter sometimes referred to as "E.B.E.'s" as subcontractors on this project is 10 % of the contract amount; and

WHEREAS, Owner has, pursuant to Executive Order 90-01 (as amended 12/19/91), adopted a goal of at least 10% of the contract amount to Emerging Business Enterprises as defined under said Executive Order; and

WHEREAS, said Executive Order states:

"Section 2, Paragraph C. Each contractor shall be required to make a good faith effort to subcontract 10% of the contract amount to Emerging Business Enterprises on each construction contract he/she is awarded. In the event a contractor is unable to subcontract 10% of the contract amount or secure the services of an Emerging Business Enterprise, he/she will be required to submit a completed Request for Waiver form on which he/she will provide a written description of the efforts

taken to comply with the participation goals."

NOW, THEREFORE, in consideration of the foregoing and of the mutual agreements hereinafter contained, the sufficiency of which consideration is hereby acknowledged, the parties hereto agree as follows:

1. Conditional Award: Subject to approval by the Common Council of the City of Fort Wayne as stipulated in the construction contract to which this Rider is attached, Owner awards the construction contract to the Contractor.

2. E.B.E. Retainage Requirements: If the contractor is in compliance with the provisions of the construction contract to which this Rider is attached, the Owner will make payments for such work performed and completed. However, in any such case, the Owner will retain ten percent (10%) of the total amount owing to insure satisfactory completion of the contract and to insure contractor's compliance with this E.B.E. Rider. Upon final inspection and acceptance of the work, and determination by the Fort Wayne Board of Public Works that the contractor has made a good faith effort to subcontract 10 % of the contract amount to emerging business enterprises, the contractor will be paid in full.

In the event there is a determination that good faith compliance with this E.B.E. Rider has not occurred, appropriate reduction in the final payment pursuant to paragraph 6 of this E.B.E. Rider will be made.

If the contract is in excess of \$100,000, the contract will be subject to the standard Board of Public Works escrow agreement. However, payments to the CONTRACTOR are not to exceed 90% of the total contract amount until the OWNER has verified that the

CONTRACTOR has made good faith efforts to attain the E.B.E. goal stipulated in this E.B.E. Rider. Payment of the final 10% of the total contract amount will be dependent upon good faith efforts to comply with this E.B.E. Rider, and subject to reduction in the event of non-compliance as provided in paragraph 6 of this E.B.E. Rider.

3. Request for Waiver: If at the time final payment application is made, contractor has not attained the 10 % E.B.E. goal, contractor shall file with the final payment application a "Request for Waiver". Said Request for Waiver shall contain a written description of the efforts taken by Contractor to attain the 10 % E.B.E. goal.

4. Determination of Waiver Requests: The Contract Compliance Department of the City of Fort Wayne shall examine all Requests for Waiver to determine if Contractor's efforts constitute good faith efforts to attain such goal and shall submit recommendations concerning said Requests for Waiver for the final determination of the Board of Public Works of the City of Fort Wayne.

5. Good Faith Per Se. In any case, a Contractor shall be deemed to have made good faith efforts at compliance where E.B.E.'s have been subcontracted for every sub-contract for which there are qualified E.B.E.'s available.

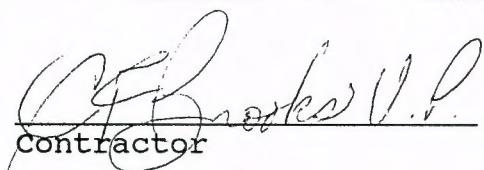
6. Consequence of Non-Compliance: In the event the Board of Public Works approves a recommendation that contractor failed to make good faith efforts at compliance, the contract shall be reduced by the amount calculated as the difference between 10 % and the percentage level met. Said amount shall be added to

the City of Fort Wayne E.B.E. Bond Guarantee Fund and contractor agrees to accept the reduced amount as full payment under the terms of his/her contract.

7. Waiver Approved: In the event the Board of Public Works determines that a good faith effort to comply with this E.B.E. Rider has been made, the contract shall not be reduced, and the balance owing to the contractor shall be paid in full.

IN WITNESS WHEREOF, the parties have executed this E.B.E. Rider this 24 day of August, 1994.

By:


C. Brooks U. L.
Contractor

By:

Board of Public Works


Linda Buskirk


C. James Owen

ATTEST:


Patricia J. Crick, Clerk

Read the first time in full and on motion by Broadbey, seconded by , and duly adopted, read the second time by , title and referred to the Committee on Public Works (and the City Plan Commission for recommendation) and Public Hearing to be held after due legal notice, at the Common Council Conference Room 128, City-County Building, Fort Wayne, Indiana, on , the day of , 19 , at o'clock M., E.S.T.

DATED: 9-12-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Read the third time in full and on motion by Broadbey, seconded by , and duly adopted, placed on its passage. PASSED LOST by the following vote:

| | <u>AYES</u> | <u>NAYS</u> | <u>ABSTAINED</u> | <u>ABSENT</u> |
|--------------------|---------------------------|---------------------------|---------------------------|---------------------------|
| <u>TOTAL VOTES</u> | <u>2</u> | <u> </u> | <u> </u> | <u>2</u> |
| <u>BRADBURY</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>EDMONDS</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>GiaQUINTA</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>HENRY</u> | <u> </u> | <u> </u> | <u> </u> | <u>✓</u> |
| <u>LONG</u> | <u> </u> | <u> </u> | <u> </u> | <u>✓</u> |
| <u>LUNSEY</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>RAVINE</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>SCHMIDT</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |
| <u>TALARICO</u> | <u>✓</u> | <u> </u> | <u> </u> | <u> </u> |

DATED: 9-27-94

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Passed and adopted by the Common Council of the City of Fort Wayne, Indiana, as (ANNEXATION) (APPROPRIATION) (GENERAL) (SPECIAL) (ZONING) ORDINANCE RESOLUTION NO. 1-76-94 on the 27th day of September, 1994

ATTEST:
Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

(SEAL)
Archie Langley
PRESIDING OFFICER

Presented by me to the Mayor of the City of Fort Wayne, Indiana, on the 28th day of September, 1994, at the hour of 11:30 o'clock A M., E.S.T.

Sandra E. Kennedy
SANDRA E. KENNEDY, CITY CLERK

Approved and signed by me this 28th day of September, 1994, at the hour of 4:25 o'clock P M., E.S.T.

Paul Helmke
PAUL HELMKE, MAYOR

TITLE OF ORDINANCE: Contract #6338-94, Washington Center Road Improvements Phase II: Goshen Road to East of Ridgebrook Drive

DEPARTMENT REQUESTING ORDINANCE: Board of Public Works

SYNOPSIS OF ORDINANCE: Contract #6338-94 is for the widening of pavement, resurfacing, new shoulders, drainage ditch rehabilitation, pavement markings and restoration on Washington Center Road: Goshen Road to East of Ridgebrook Drive (CREDIT BOND) Brooks Construction Company is the contractor. **PRIOR APPROVAL RECEIVED ON 8/23/94.**

EFFECT OF PASSAGE: Project can be completed.

EFFECT OF NON PASSAGE:

MONEY INVOLVED (DIRECT COSTS, EXPENDITURE, SAVINGS) \$292,295.63 (Credit Bond)

ASSIGNED TO COMMITTEE:

394-09-16

BILL NO. S-94-09-16

REPORT OF THE COMMITTEE ON
PUBLIC WORKS

ARCHIE L. LUNSEY - JANET G. BRADBURY - CO-CHAIR
CLETUS R. EDMONDS
SAMUEL J. TALARICO

WE, YOUR COMMITTEE ON PUBLIC WORKS TO WHOM WAS

REFERRED AN (ORDINANCE) ~~(RESOLUTION)~~ approving Contract
#6338-94, WASHINGTON CENTER ROAD IMPROVEMETNS PHASE II: GOSHEN ROAD TO
EAST OF RIDGEBROOK DRIVE between BROOKS CONSTRUCTION COMPANY, INC.
and the City of Fort Wayne, Indiana, in connection with the Board of
Public Works

HAVE HAD SAID (ORDINANCE) (RESOLUTION) UNDER CONSIDERATION
AND BEG LEAVE TO REPORT BACK TO THE COMMON COUNCIL THAT SAID
(ORDINANCE) (RESOLUTION)

DO PASS DO NOT PASS ABSTAIN NO REC

DATED: 9-27-94.

Sandra E. Kennedy
City Clerk